IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3880 OF 2004

IN

CRIMINAL APPEAL NO. 1082 of 2004

Laxman Mahadeo Sariputra & ors. .. Applicants

versus

State of Maharashtra & ors. .. Respondents

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Mr.Shirish Gupte, Sr.Counsel with Mr.M.K. Kocharekar for the applicants.

Mr.A.M. Shringarpure, APP for the State.

CORAM : V.M. KANADE, J

DATED : 22nd September 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the appellant and the learned APP appearing on behalf of the State.

2. This an application filed by the applicants seeking stay of the order of conviction passed by the Addl.Sessions Judge, Sindhudurg in Sessions Case no. 28 of 2000. The applicants are working in the police department. They were charged u/s.302, 147, 148, 330 r/w sec.149, 302 r/w sec.34 and 331 r/w 149, 218 r/w sec.149 of the IPC. The trial Court convicted them u/s.330 r/w sec.34 and sentenced them to undergo RI for the period already undergone by them in jail. They were however, acquitted of the offences under sections 147, 148, 149, 302 r/w sec.34 and the other sections. The prosecution case is that the applicants had apprehended the deceased in robbery case and they were investigating the said offence. During the course of investigation while recovery was to be made at the instance of the accused as required u/s.27 of the Evidence Act and the accused was leading them towards the place where he had kept the stolen articles, the deceased died. The applicants had taken a specific defence that the deceased had died as a result of a fall which he had sustained and the injury which were sustained as a result of a fall while he was leading the applicants to the place where the

articles which were stolen by him were hidden.

3. The trial Court acquitted the accused under the other sections and held that the fatal wound no.26 and three abrasions could have been caused by a fall and the other 8 injuries are likely to be post mortem B.. stains. The trial Court has also observed that the accused had not committed the crime for their personal gains.

4. The applicants now have received a show cause notice from the department as to why their services should not be suspended. Therefore, the present application has been filed.

5. The applicants have stated in the application that all of them have worked in the police department for a long time and the applicant no.2 is a recipient of 160 awards during his tenure and has also passed the PSI examination. The applicant no.3 is also a recipient of 41 awards during his tenure of 14 years in the police department.

6. The learned counsel appearing on behalf of the applicant therefore, submitted that this was a fit case

where the conviction should be stayed. The learned APP appearing on behalf of the State vehemently opposed the application for staying the conviction. He relied on two judgements of the Apex Court. One reported in the case of K.C. Sareen Vs. CBI, Chandigarh reported in 2001 SCC(Cri) 1186 which has been subsequently followed in a recent judgement by the Apex Court in the case of State of Maharshtra Vs. Gajanan & Anr. reported in 2004(2) Bom.C.R (Criminal) 503, wherein the same view has been reiterated and accepted. He submitted that therefore the said conviction may not be stayed.

7. In the present case, the applicants have been acquitted for the offences punishable u/s.302, 147, 148, 149 etc. The trial Court in paragraph no.43 of the judgement has observed that the injuries which were found on the deceased as per the certificate Exhibit-190 were not very serious. The trial Court has further observed that the fatal wound no.26 and three abrasions could have been caused as a result of the fall. The applicants have taken a specific defence that during the course of investigation when the accused was leading them towards the articles which were stolen in a robbery committed by the

deceased along with others had a fall from a hill and as a result of that fall, he received those injuries and died. The trial Court also has observed that the accused have not committed the crime for their personal gains. These findings have not been challenged by the State by filing an appeal against acquittal. The only offence for which they are convicted is under section 330 r/w 34 of the IPC. There is no allegation made against the applicants that they had appropriated the property which was stolen for their personal gains. Their record also shows that they had a meritorious service in the police department. Under these circumstances, I am of the view that the conviction is liable to be stayed.

8. So far as reliance place by the learned APP appearing on behalf of the State or the judgement of the Apex Court in the Sareen's case and in the case of State of Maharashtra Vs. Gajanan (Supra) in my view, the ratio of the said judgements would not be applicable to the facts of the present case. The Apex Court in K.C. Sareen'case (Supra) had observed in paragraph no.11 of the said judgement that the Court did have a power to suspend an order of conviction in

view of the specific provisions of section 389(1) of the Code of Criminal Procedure. The Apex Court however observed that in case where the accused were public servants and were charged and convicted of offences under the Prevention of Corruption Act, it was not advisable that a corrupt public Officer should continue to hold public office.

9. In the light of the said observations, the ape Court observed in paragraph no.13 that therefore, a convicted public servant should ordinarily be kept under the disability of conviction till the disposalof the appeal.

10. In my view, the said observations are made in the light of what is stated in paragraph no.12 and the said observations should be read in the context of what is stated in paragraph no.12. Para 12 reads as under:-

> "Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, though strong legislative, executive as well as judicial exercises the corrupt public

servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even

> without the help of a court order suspending the conviction."

11. The same view has been accepted in the subsequent judgement in the case of State of Maharashtra Vs. Gajanan (Supra). In both these cases, the public servant was charged and convicted under the provisions of Prevention of Corruption Act. In my view, therefore, a distinction will have to be made in view of the facts and circumstances of the present case. Firstly, the applicants were not charged of the offences punishable under the Prevention of Corruption Act. The applicants have been acquitted of the charge of sec.302 r/w other sections. The applicants are convicted only u/s.330 of the IPC which reads as under:-

> **330.** Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the suffered, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the rstoration of any property or valuable security, shall be punished with imprisonment of either description for

a term which may extent to seven years, and shall also be liable to fine."

12. In my view, the ration of the said two judgements of the Apex Court would not be applicable to the facts of the present case. The averments made in para no.2 of the application regarding meritorious service of the applicants has not been controverted by the State. The meritorious service of the applicants would also be another circumstance for granting stay to the order of conviction.

13. In the result, Criminal Application is allowed in terms of prayer clause (a) and is disposed of accordingly.

14. All concerned to act on a copy of this order duly authenticated by the Court Sheristedar.

V.M. KANADE, J